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Attorneys for Plaintiff,
MEDICAL CHEMICAL CORPORATION.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**MEDICAL CHEMICAL
CORPORATION, a New York
corporation,**

) Case No.:

Plaintiff,

**COMPLAINT FOR PATENT
INFRINGEMENT**

[JURY DEMAND]

VS.

VWR INTERNATIONAL, LLC, a Delaware limited liability company, APACOR, LTD., a business entity organized under the laws of Great Britain, and DOES 1-9, inclusive,

Defendants.

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For its Complaint, Plaintiff Medical Chemical Corporation alleges as follows:

PARTIES

1. Plaintiff Medical Chemical Corporation (“Plaintiff” or “MCC”) is a corporation organized under the laws of the State of New York, with its principal place of business at 19430 Van Ness Avenue, Torrance, California 90501-1104. Plaintiff’s products are sold and offered for sale throughout the United States, including in this judicial district.

2. Defendant VWR International, Inc. (“VWR”) is a Delaware limited liability company believed to have a business address of Radnor Corporate Center, Building One, Suite 200, 100 Matsonford Road, Radnor, Pennsylvania 19087.

3. Defendant Apacor, Ltd. ("Apacor") is a business entity organized under the laws of Great Britain, with a business address of Unit 5 Sapphire Centre, Fishponds Road, Wokingham, Berkshire RG4 12 QL, England. Apacor has a U.S. sales contact with a telephone number of (619) 376-0146.

4. At the present time, the relationship, if any, between VWR and other VWR entities (e.g., VWR International, Inc.) is unclear, as is the relationship with either of these entities with other VWR entities, of which there are many, in terms of conducting the activities described herein. Plaintiff reserves the right to amend this complaint, if necessary, once discovery clarifies which particular VWR entities are responsible for the acts alleged herein.

5. Unless singularly referenced, or unless context dictates otherwise, VWR LLC, and Apacor shall be herein collectively referred to as “Defendants.”

6. The true names and capacities, whether individual, corporate, or otherwise of Defendants Does 1-9 inclusive, are unknown to Plaintiff, who therefore sues them by such fictitious names. Plaintiff will seek leave to amend this complaint to allege their true names and capacities when they have been

1 ascertained. Plaintiff is informed and believes and thereon alleges that each of the
 2 fictitiously named Defendants is responsible in some manner for the occurrences
 3 herein alleged. At all times herein mentioned, Defendants Does 1-9 inclusive were
 4 the agents, servants, employees or attorneys of their co-defendants, and in doing the
 5 things hereinafter alleged were acting within the course and scope of their authority
 6 as those agents, servants, employees or attorneys, and with the permission and
 7 consent of their co-defendants.

8

9 **JURISDICTION AND VENUE**

10 7. This Court has subject matter jurisdiction over this action pursuant to
 11 28 U.S.C. § 1331 and § 1338(a) as it arises under Acts of Congress related to
 12 patents.

13 8. This Court has personal jurisdiction over Defendant VWR in that it
 14 engages in continuous and systematic business activities in this judicial district,
 15 including having multiple active sales representatives for its products in this
 16 judicial district, offering its accused products described herein for sale in this
 17 judicial district, and selling products in this judicial district. VWR is believed to
 18 distribute thousands of its catalogs to customers or potential customers for its
 19 products in California, including in this judicial district. In addition, VWR is
 20 registered with the California Secretary of State to conduct business in California.
 21 Plaintiff believes VWR is subject to general jurisdiction in this judicial district.
 22 Furthermore, however, VWR, on information and belief, regularly sells and
 23 distributes the accused products described herein in this judicial district.

24 9. This Court has personal jurisdiction over Defendant Apacor in that
 25 Apacor causes the accused products described herein to be imported into the United
 26 States, including into this judicial district. By importing its products into the
 27 United States and distributing them through VWR, a company known to conduct
 28 business throughout the United States, Apacor, on information and belief, placed its

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1 accused products described herein into the stream of commerce knowing that they
2 would be sold and distributed in this judicial district.

3 10. With respect to the accused products described herein, and the use and
4 distribution thereof, Apacor and VWR's activities are inextricably intertwined such
5 that Apacor is knowledgeable of VWR's sale and distribution of the accused
6 products described herein and uses thereof, including with respect to this judicial
7 district.

8 11. Defendants, on information and belief, were at all relevant times
9 herein, aware of Plaintiff's patented product, "Total-Fix," and knew that Plaintiff is
0 a company based in this judicial district, such that Defendants knew that their
1 importation, offering to sell, and selling of the accused products described herein
2 would substantially injure a company based in this judicial district.

3 12. Venue is proper in this judicial district as to Defendants pursuant to 28
4 U.S.C. § 1391(b)(2) and § 1391(c) in that Defendants are subject to personal
5 jurisdiction in this judicial district, and at least a substantial portion of the acts and
6 omissions giving rise to the asserted claims occurred, or were known to have
7 injurious effects on a company known by Defendants to be based in this judicial
8 district, namely Plaintiff.

FACTUAL ALLEGATIONS

13. Andrew J. Rocha invented a “Universal Fecal Fixative” composition
14. that possessed significant advantages over prior fecal fixative protocols. Mr. Rocha
15. assigned his rights in the invention to Plaintiff, which applied for a patent on the
16. Universal Fecal Fixative on February 25, 2011. That application resulted in U.S.
17. Patent No. 8,338,130, which issued on December 25, 2012 (the “‘130 patent”).
18. Said patent is attached hereto as **Exhibit 1**. The patent was duly and legally issued
19. to Plaintiff, as assignee.

28|| 14. Defendant Apacor manufactures a composition known as "Alcorfix"

1 that is believed to be within the scope of one or more claims of the '130 Patent.
 2 Attached hereto as **Exhibit 2** is a Safety Datasheet for Alcorfix. According to the
 3 Safety Datasheet, Alcorfix contains 25% ethanol, 7.9% zinc sulfate, 4.8% acetic
 4 acid, 1% isopropanol, and 1% methyl alcohol. Additional testing has confirmed
 5 that the composition is otherwise comprised of water, lacks polyvinyl alcohol, and
 6 has a pH of approximately 2.9.

7 15. By way of example only, and without waiving any right to assert
 8 infringement of any other claim of the '130 Patent either directly or indirectly, the
 9 following table includes the independent claims in the '130 Patent compared to the
 10 contents of Alcofix:

'130 PATENT CLAIMS	ALCORFIX
13 1. A mercury-free, formaldehyde- 14 free and polyvinyl alcohol-free 15 universal fixative composition for 16 preserving a fecal sample, said 17 universal fixative consisting 18 essentially of one or more low 19 molecular weight alcohols; zinc 20 sulfate; acetic acid; and water.	Alcorfix is mercury-free, formaldehyde-free, and polyvinyl alcohol-free composition for preserving a fecal sample. Alcorfix consists essentially of: ethanol, isopropanol, and methyl alcohol, each of which are low molecular weight alcohols, zinc sulfate, acetic acid, and water.
22 8. A mercury-free, formaldehyde- 23 free and polyvinyl alcohol-free 24 universal fixative composition for 25 preserving a fecal sample, said 26 universal fixative consisting 27 essentially of: 28 a. one or more low molecular weight	Alcorfix is mercury-free, formaldehyde-free, and polyvinyl alcohol-free composition for preserving a fecal sample. Alcorfix consists essentially of: ethanol, isopropanol, and methyl alcohol, each of which have molecular weights between

1 alcohols having a molecular weight 2 between about 30 and about 65 3 Daltons, the total amount of low 4 molecular weight alcohols being in 5 an amount of from about 20% to 6 about 35% of the total volume of the 7 universal fixative; 8 b. about 1% to about 10% w/v of 9 zinc sulfate; 10 c. acetic acid; and 11 d. water; 12 wherein the acetic acid is added in an 13 amount sufficient to adjust the pH of 14 the universal fixative composition to 15 a range from about pH 3 to about pH 16 5	about 30-65 Daltons, and are present in an amount from 20-35% of Alcorfix by volume; 7.9% zinc sulfate; 4.8% acetic acid; and Water. The pH of Alcorfix is 2.9, which literally or equivalently “about” 3.
17 12. A method for preserving fecal 18 specimens, said method comprising 19 the step of contacting a fecal 20 specimen with an amount of a 21 parasitological fixative effective for 22 preserving the fecal specimen, said 23 parasitological fixative consisting 24 essentially of one or more low 25 molecular weight alcohols; zinc 26 sulfate; acetic acid; and water	VWR's customers using Alcorfix to fix fecal specimens are directly infringing this claim (and thus, Defendants are indirectly infringing this claim) inasmuch as VWR's customers are contacting a fecal specimen with a fixative (Alcorfix) that consists essentially of: ethanol, isopropanol, and methyl alcohol, each of which are low molecular weight alcohols, zinc sulfate, acetic acid, and water. VWR's website contains a web page for

	Parasep® Fecal Parasite Concentrators, Apacor (https://us.vwr.com/store/catalog/product.jsp?catalog_number=10796-702), which states: “We have many users of our Parasep methodology in the US ...”
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16. On information and belief, Apacor manufactures, or has manufactured
 7 for it, Alcorfix, and/or fecal testing products or kits containing Alcorfix as a
 8 component of such fecal testing products or kits, in the United Kingdom.

17. On information and belief, Apacor imports into the U.S., or causes to
 9 be imported into the U.S., Alcorfix, and/or fecal testing products containing
 10 Alcorfix.

18. VWR is Apacor's U.S. distributor of Alcorfix, and fecal testing
 11 products containing Alcorfix. Attached hereto as **Exhibit 3** is a printout of a page
 12 from Apacor's website indicating that VWR is Apacor's U.S. distributor. Attached
 13 hereto as **Exhibit 4** are printouts of pages from VWR's website offering for sale
 14 Alcorfix and other products containing Alcorfix and/or pages describing Alcorfix
 15 and its composition and intended use. Attached hereto as **Exhibits 5-11** are
 16 additional printouts of pages on or linked to VWR's or Apacor's websites
 17 concerning Alcorfix, fecal testing products containing Alcorfix, and uses thereof.

18. The products (hereafter the “Accused Products”) presently known to
 19 Plaintiff that appear to infringe the ‘130 Patent (by containing Alcorfix), include,
 20 but may not be limited to the following (as set forth on VWR's website at
 21 <https://us.vwr.com/store/catalog/> product.jsp?catalog_number=10796-702) (see
 22 **Exhibit 4**, attached hereto):

1 **Parasep Solvent-Free System:**

2 Capacity	3 Supplier No.	4 Format	5 Includes	6 VWR Catalog 7 No.
4 15 mL	5 248300	5 Mini	5 Pre-Dispensed with 3.3 mL 6 AlcorFix	6 10183-860
6 50 mL	7 149995	7 Midi	7 15 packs containing 1 x 8 mL 8 AlcorFix	8 10147-167

9 **Transport Vials:**

10 Capacity	11 Supplier No.	12 Includes	13 VWR Catalog 14 No.
12 30 mL	13 249420	13 Pre-Dispensed with AlcorFix	14 10184-190

14 **Dual Vial Solvent-Free System:**

15 Capacity	16 Supplier No.	17 Format	18 Includes	19 VWR Catalog 20 No.
17 15 mL	18 248320	18 Mini	18 15 packs containing 1 x 3.3 19 mL AlcorFix, 1x Clean	19 10183-876
19 50 mL	20 249320	20 Midi	20 15 packs containing 1 x 8 mL 21 AlcorFix, 1x Clean	21 10183-868

22 20. VWR LLC is believed to sell products, including the Accused
 23 Products, to medical clinics, medical diagnostic laboratories, university
 24 laboratories, and the like. It is these end users who are infringing claim 12 of the
 25 ‘130 Patent and potentially its dependents, by placing a fecal specimen in contact
 26 with Alcorfix. VWR and Apacor are contributing to and/or inducing the
 27 infringement of claim 12 of the ‘130 Patent and potentially its dependents by
 28 touting, or having touted for them, the benefits of Alcorfix in connection with fecal

1 specimen testing, by providing detailed instructions and promotional information to
 2 end users on the use of Alcorfix in fecal specimen testing, and by actively
 3 promoting and selling Alcorfix at trade shows and through sales representatives.

4 21. The involvement of other VWR entities in the distribution and sales of
 5 infringing products is presently unknown, but Plaintiff reserves the right to amend
 6 this complaint if it becomes known that other VWR entities were involved in the
 7 infringing activities.

8 22. Plaintiff has not licensed or otherwise authorized Apacor or VWR (or
 9 its dealers, customers, affiliates, or the like) to deal in a composition that is within
 10 the scope of one or more claims of the '130 Patent, including the Accused Products.
 11 In other words, the making, using, importing, offering to sell, and/or selling of the
 12 Accused Products by Defendants (or its dealers, customers, affiliates, or the like) is
 13 unauthorized.

14 23. Defendants' infringement of Plaintiff's '130 Patent is willful. Plaintiff
 15 has advertised and publicized its novel, patented fecal specimen fixative at all
 16 relevant times herein, including on its website at <http://www.med-chem.com/> and
 17 <http://med-chem.com/index.php?url=products&subsection=parasitology&product=total-fix> and elsewhere. The ARUP reference laboratory, which Defendants tout as
 18 being a collaborator with them in connection with Alcorfix and fecal testing kits
 19 containing Alcorfix (see **Exhibit 4**, attached hereto, which is a printout from
 20 VWR's website – "Apacor is proud to confirm that our collaborators in the US are
 21 ARUP with whom we have improved our reagents and procedure further still"), had
 22 specific knowledge of Plaintiff's novel fixative because Plaintiff provided ARUP
 23 with samples of "Total-Fix" marked with the '130 Patent number in approximately
 24 February of 2014. Thus, Defendants and their collaborator, ARUP, have known
 25 about Plaintiff's novel fixative and the '130 Patent at all relevant times herein.

26 24. For all of these reasons, Defendants are liable for money damages
 27 pursuant to 35 U.S.C. § 284 to Plaintiff. In addition, Defendants must be deterred

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1 from any further violations of Plaintiff's rights in the '130 Patent through a
2 permanent injunction. Defendants should also be required to pay Plaintiff's
3 attorneys' fees, expenses, and costs for its willful and blatant disregard of Plaintiff's
4 patent rights.

5

6 COUNT I –PATENT INFRINGEMENT

7

35 U.S.C. §§ 101 ET SEQ.

8 25. Plaintiff hereby repeats and incorporates herein the allegations set
9 forth in paragraphs 1 through 24 above.

10 26. Plaintiff's '130 Patent (see, Exhibit 1 attached hereto) has at all
11 relevant times subsequent to its issue date been fully enforceable and is now fully
12 enforceable.

13 27. Plaintiff, at all relevant times herein, has marked its patented product
14 and literature related thereto with the '130 Patent number.

15 28. Subsequent to the issuance of the '130 Patent, Defendants have
16 infringed the '130 Patent by making, using, importing, offering to sell, and/or
17 selling, and continuing to make, use, import, offer to sell and/or sell products that
18 come within the scope of at least one claim of the '130 Patent, and/or that come
19 within a range of equivalents of at least one claim of the '130 Patent, and/or
20 contributing to the infringing activities of others in the form of their use of
21 Alcorfix, or fecal testing products containing Alcorfix.

22 29. The making, using, importing, offering to sell, and/or selling of the
23 Accused Products by Defendants, and/or contributing to the infringing activities of
24 others, has been without authority or license from Plaintiff and is in violation of
25 Plaintiff's rights under the '130 Patent, thereby infringing the '130 Patent.

26 30. For the reasons stated elsewhere herein, Defendants' infringement of
27 Plaintiff's '130 Patent has been, and is, willful, with knowledge of, and in disregard
28 for the exclusive rights of Plaintiff set forth in its patent.

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1 31. The amount of money damages due Plaintiff as a result of Defendants'
2 infringing acts will be determined according to proof at trial, with Plaintiff being
3 entitled to damages adequate to compensate it for the infringements, but in no event
4 less than a reasonable royalty.

5 32. The harm to Plaintiff arising from Defendants' acts of infringement of
6 Plaintiff's '130 Patent is not fully compensable by money damages. Rather,
7 Plaintiff has suffered and continues to suffer irreparable harm which has no
8 adequate remedy at law and which will continue unless Defendants' conduct is
9 enjoined.

0 33. Plaintiff is therefore also entitled to a preliminary injunction, to be
1 made permanent on entry of the judgment, preventing Defendants from further acts
2 of infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants, as follows:

A. A finding that Defendants have directly and/or indirectly infringed the ‘130 Patent.

B. For an order preliminarily and permanently enjoining Defendants, and their officers, directors, agents, servants, attorneys, affiliates, and employees and all other persons acting in concert with them from committing any further acts of infringement, including but not limited to, manufacturing, using, importing, offering to sell, and selling the Accused Products (or products colorably similar thereto), or aiding or abetting or assisting others in such infringing activities;

C. For an order directing Defendants to file with this Court and to serve on Plaintiff within thirty (30) days after service on Defendants of the injunction granted herein, or such extended period as the Court may direct, a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction and order of the Court;

D. For an order seizing and impounding all Accused Products, including those en route to the U.S. from VWR's overseas supplier(s), Apacor;

E. For a judgment to be entered for Plaintiff against Defendants awarding damages adequate to compensate Plaintiff for the infringement, but in no event less than a reasonable royalty;

F. For a judgment awarding to Plaintiff prejudgment and postjudgment interest until the award is fully paid;

G. For a judgment that Defendants have willfully and deliberately infringed Plaintiff's patent rights, such that it is determined that this is an exceptional case entitling Plaintiff to enhanced damages under the Patent Laws of the United States:

H. For an award to Plaintiff of costs, expenses, and attorneys' fees, incurred in bringing this action under the Patent Laws of the United States; and,

I. For such other and further relief as this Court may deem just and equitable under the circumstances.

Respectfully submitted:
CISLO & THOMAS LLP

Dated: October 30, 2015 By

By:

/s/Daniel M. Cislo

Donald M. Cislo, Esq.

Daniel M. Cislo, Esq.

Mark D. Nielsen, Esq.

Atorneys for Plaintiff,

MEDICAL CHEMICAL

CORPORATION

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues raised by the Complaint so triable.

Respectfully submitted:
CISLO & THOMAS LLP

Dated: October 30, 2015 By:

By:

/s/Daniel M. Cislo

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